condition, express, implied, or reasonably to be inferred from the nature of the dealing and the usage in respect thereof, that the said article may be afterwards redeemed or re-purchased upon any terms whatsoever."

It was therefore submitted on behalf of the appellant that the respondent was, in respect of this transaction, a moneylender and not a pawnbroker as the amount advanced was in excess of $250. It was also urged that the money was lent at a remunerative rate of interest and as the evidence showed that the respondent had no licence as a moneylender, the ingredients of the offence had been established and that the defence should have been called.

For the respondent it was argued that the prosecution evidence showed he was normally carrying on his business as pawnbroker, and here only one isolated case outside the pawnbroking business was proved and that did not bring him within the definition of a moneylender within the meaning of the Ordinance, unless there was evidence of some degree of system and continuity in his moneylending transactions.

In support of this proposition the following English cases were cited:—*Newton* v. *Pyke*,[1] *Kirkwood* v. *Gadd*,[2] *Newman* v. *Oughton*[3].

In the case *Sadhu Singh* v. *Sellathurai*[4], Thomson J. (as he then was) accepted that proposition as a correct statement of the law, but he proceeded to observe that "in its application it has to be remembered that here and in Singapore once a single moneylending transaction is proved against a party then the onus of proving that he is not carrying on the business of moneylending passes to him. In this connection it is to be observed in considering the way in which the English Courts have applied the law to the facts of individual cases that the English Moneylenders Act of 1900 contains no 'reversal of onus' provision similar to our section 3."

Section 3 of the Moneylenders Ordinance, No. 42 of 1951, after referring to certain exceptions which are not relevant in this case, says that "any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

In this case there was evidence that the respondent had no moneylender's licence and that he had lent money at a remunerative rate of interest. All the conditions necessary to attract the operation of the presumption in section 3 of the Ordinance were therefore present. The defence should have been called.

The appeal is allowed, the order of acquittal set aside and the case is remitted to the Sessions Court for the President to deal with it according to law.

Appeal allowed.

Solicitors:—*Joseph & Son.*

LIM CHIN AIK v. REGINA (No. 2)

[P.C. (Viscount Radcliffe, Lord Evershed & Lord Devlin) April 3, 1963]

[Privy Council Appeal No. 1 of 1962]

Criminal Procedure—Costs—Against Crown.

The Privy Council allowed an appeal by the appellant (*supra* p. 50) against his conviction of contravening section 6(3) of the Immigration Ordinance and directed the Crown to pay the costs of the appeal. On a petition by the Crown against the order for costs,

Held: (1) there is no absolute rule of practice that in no case can a successful appellant in a criminal matter before the Board receive costs from the respondent;

(2) in this case the order for costs did not amount to a censure of the Crown, but was appropriate since the Crown from the first had been involved in illegal proceedings against the appellant.

Case cited in argument:—

(1) *Teper* v. *R.* [1952] A.C. 480, 493; [1952] 2 All E.R. 447.

PRIVY COUNCIL—PETITION.

By this petition the Crown sought to have set aside the order of the Board in their judgment in *Lim Chin Aik* v. *R.* (*supra*, p. 50) that the Crown should pay the costs of the successful appellant. The Board had allowed the appeal of Lim Chin Aik against his conviction of contravening section 6(3) of the Immigration Ordinance of Singapore by remaining in Singapore (after he had entered) when he had been prohibited from entering by an order made by the Minister under section 9 of the Ordinance.

J. G. Le Quesne Q.C. and *Mervyn Heald* appeared for the Crown. The most recent relevant authority on the question of costs in criminal appeals is *Teper* v. *R.*[1] where it was said that "the practice of the Board is against giving expenses to the successful appellant in a criminal appeal save in very special circumstances.... In the present case there are no circumstances which would justify a departure from the "ordinary rule of practice." At the hearing of the present appeal no argument was addressed by either party, or invited by the Board, on any question relating to the costs of the appeal. In my experience it has never been the practice to discuss costs in criminal cases unless an application is made for them. It is not said that the practice is always binding on the Board, but there has never been any suggestion that there is any alteration in the practice. The offence of which the Crown has been guilty here is misinterpretation of the statute, and of no misconduct beyond that, and the Board in its judgment described the interpretation as being a difficult point and one of importance. It was open to the Crown to say that they were acting in Singapore on certain authorities in this country, which it has been necessary for the Board to disapprove. When the question is one of interpretation of a section on an important and diffi-

cult point the Crown is not open to any criticism for having taken one of two possible views of the section which had some support from authorities in this country. There was here no injustice beyond what is always suffered by a man who has been convicted. This is not a case in which the Crown have exposed themselves to any criticism. There were not in this case the very special circumstances justifying the award of costs.

E. F. N. Gratiaen Q.C. and *Dick Taverne* for the respondent (appellant in the appeal) were not called upon.

Viscount Radcliffe, giving the judgment of the Board, said: Their Lordships take the view that the petition must be dismissed. It is not, and never has been, an absolute rule that in no case can a successful appellant in a criminal matter before the Board receive costs from the respondent. In this case we do not think that it is necessary to treat the order that the Crown should pay the costs as amounting to any censure or hostile criticism of what has been done, but we cannot ignore the fact that this is not merely a question of a conviction which has gone wrong in the sense that the law has been wrongly applied. It is a case in which the Crown from the first has been involved in these, as the Board has held, illegal proceedings which brought about the charge and the trial itself. In their Lordships' view this is one of those cases in which it would be proper that the Crown should be ordered to pay, as the Board has ordered, the costs of the appellant before the Board.

Gratiaen Q.C. It is submitted that this is a proper case for this person who was the luckless victim, to use your Lordships' phrase, of a misinterpretation which led to six weeks' custody on a charge which was withdrawn, followed by expulsion from a country on an illegal conviction, followed by having to come here again for your Lordships to reconsider the order for costs in the original judgment, to be indemnified in regard to that extra expense as well.

Viscount Radcliffe: Mr. Le Quesne, if you do not succeed on this application we do not see how you can do other than pay those costs.

Petition dismissed.

Solicitors:—*Charles Russell & Co.; T. L. Wilson & Co.*

HANAFIAH v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 3, 1963]

[K.L. — F.M. Criminal Appeal No. 5 of 1963]

Criminal law—Murder—Conviction under s. 302 of Penal Code—Defence of provocation—Direction to jury whether killing was murder or less than murder—Whether direction wrong in law—Direction on unanimity or majority of verdict—Whether bad—Intervention by judge in examination of witnesses—Whether sufficient to upset verdict.

Following a conviction for the offence of murder under section 302 of the Penal Code in a case where the killing was not in dispute, the appeal was argued on the following grounds: (1) the direction to the jury contained the statement that the issue before them was whether the killing was murder or whether it was something less than murder; (2) the direction had contained the statement: "I would like you to agree on a verdict, for otherwise I will have to order a retrial which would cause expense to all concerned"; (3) the judge had intervened on several occasions to question witnesses when he should not have done so.

Held: (1) because there was never at any time a suggestion from the defence that the appellant was not guilty of any offence whatsoever, the direction that the issue was whether the killing was murder or something less than murder was not only a correct but also a desirable direction;

(2) the second direction complained of imported no threat of inconvenience or misfortune to the jury themselves and was therefore inoffensive in law;

(3) the intervention of the judge in the examination of witnesses did not exceed what is properly permitted to a judge for his own benefit and the benefit of the jury.

Case referred to:—

(1) *Seneviratne* v. *R.* [1936] 3 All E.R. 36.

COURT OF APPEAL (CRIMINAL).

Y. S. Lee for the appellant.

Wan Hamzah (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted in the High Court at Kedah for murder in contravention of section 302 of the Penal Code. The charge against him was that on the morning of 3rd May, 1961, on a rubber estate near Kuala Muda he murdered his step-daughter named Bashah binti Nayan.

It has never been in question, and indeed at the trial it was proved up to the hilt, that the deceased woman died as a result of having a very heavy implement of the type known as a "golok" inserted several times into her person by the appellant. On at least two occasions the "golok" penetrated into the lungs causing the fatal injuries.

The background of the case was that there was a great deal of evidence that the prisoner was, to put it at the lowest, suspected of having a guilty relationship with the deceased woman who was much more younger than himself. It was the prosecution case that on the day in question he had sought her out for some improper purposes.

It was the defence that on the day in question he had come to where the woman was as it were by accident while he was searching for timber, that there had been words between them, that she used bad language towards him and slapped his face and stooped down as if to pick up something. In the light of his past unhappy